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Criminal Procedure - Competency - Use of Prescribed Medications to Maintain Mental Capabilities Renders a Defendant Competent to Stand Trial - People v. Dalfonso, 24 ILL. App. 3d 748, 321 N.E.2d 379 (1st Dist. 1974)

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plications. While the tactics employed in *Wiesenfeld* to review gender-based legislative classifications allow greater flexibility in reviewing equal protection challenges in varying factual contexts, they can only promote conflicting lower court decisions. Furthermore, the vesting of so great an amount of discretion in the judicial branch subjects the *Wiesenfeld* standard to potential abuse. As legitimate legislative purposes may be arbitrarily set aside, the precedent set by *Wiesenfeld* is truly a double-edged sword.

Florence Baum Schechtman

Criminal Procedure—Competency—USE OF PRESCRIBED MEDICATIONS TO MAINTAIN MENTAL CAPABILITIES RENDERS A DEFENDANT COMPETENT TO STAND TRIAL—*People v. Dalfonso*, 24 ILL. APP. 3d 748, 321 N.E.2d 379 (1st Dist. 1974).

In *People v. Dalfonso*,[1] the Illinois Appellate Court for the First District held that a criminal defendant whose mental capabilities are maintained through the use of prescribed medications is competent for trial.[2] This was a case of first impression for Illinois. Adopting the analysis used in several other jurisdictions,[3] the court looked solely to the present condition of the defendant and his fitness to stand trial.[4] In order to appreciate the impact of this recent case, this Casenote will examine the purposes of the competency rule.[5]

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1. 24 Ill.App.3d 748, 321 N.E.2d 379 (1st Dist. 1974).
2. *Id.* at 750-51, 321 N.E.2d at 381.
3. *See* notes 28-33 and accompanying text *infra*.
4. 24 Ill.App.3d at 751, 321 N.E.2d at 382.
5. In Illinois, competency is defined in ILL. REV. STAT. ch. 38, §1005-2-1(a) (1973):
   (a) For the purposes of this Section a defendant is unfit to stand trial or be sentenced if, because of a mental or physical condition, he is unable:
      (1) to understand the nature and purpose of the proceedings against him; or
      (2) to assist in his defense.

The statute now uses the term "fitness" rather than "competency to further clarify its intent." This use of terminology also makes explicit the fact that either mental or physical defects may render a defendant unfit for trial. ILL. ANN. STAT. ch. 38, § 1005-2-1, Council Commentary (Smith-Hurd 1973). Considering the widespread use of the word "competency" in the cases and commentaries, and because "competency" is the correct term when referring to a mental defect, the term will be used throughout this Casenote, unless reference is made to specific terms of the statute.

For an examination of statutes from other states and a comparison of their scope *see* AMERICAN BAR FOUNDATION, THE MENTALLY DISABLED AND THE LAW, Table 11-2, at 444-53 (S. Brakel & R. Rock eds. 1971).

The common law ban on trials *in absentia* formed the basis of the competency rule. Although an incompetent defendant may be physically present, his incompetency deprives him of a meaningful opportunity to defend himself.[6] Today, the trial of an incompetent defendant is held to be a denial of his right to a fair trial, and thus, a denial of due process as guaranteed by the Constitution.[7]

In addition to the protections afforded the defendant, the competency rule helps preserve the integrity of our criminal justice system by placing primary emphasis on the accuracy of the trial.[8] The rule attempts to protect a defendant unable to communicate exculpatory knowledge to his counsel from erroneous conviction. The goal of accuracy also requires that a defendant have a rational understanding of the proceeding against him in order that he may be able to evaluate what facts are relevant to the proof of his innocence.[9] A fair trial for a defendant is furthered by the competency rule because the procedural rights afforded a defendant by the sixth amendment[10] cannot be "knowingly and intelligently" exercised by a mentally incompetent defendent.[11] Finally, the decorum of the proceedings is preserved by the competency rule. A trial loses its character as a reasoned interaction when a defendant conducts himself in a bizarre manner or sits passively, unaware of the meaning of the proceedings.[12]

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6. Foote, *A Comment on Pre-Trial Commitment of Criminal Defendants*, 108 U. PA. L. REV. 832, 834 (1960). *See, e.g.*, Drope v. Missouri, 420 U.S. 162, 171 (1975); Youtsey v. United States, 97 F. 937, 940-46 (6th Cir. 1899).

7. *See, e.g.*, Pate v. Robinson, 383 U.S. 375 (1966). *See also* Drope v. Missouri, 420 U.S. 162 (1975); Bishop v. United States, 350 U.S. 961 (1956); People v. McClain, 37 Ill. 2d 173, 226 N.E.2d 21 (1967); People v. Burson, 11 Ill. 2d 360, 143 N.E.2d 239 (1957). *See generally* Note, *Incompetency to Stand Trial*, 81 HARV. L. REV. 454 (1967) [hereinafter cited as Note on *Competency*].

8. Note on *Competency* at 457.

9. Dusky v. United States, 362 U.S. 402 (1960) (per curiam). *See* notes 14-17 and accompanying text *infra*.

10. "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . . and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence." U. S. CONST. amend. VI.

11. *See, e.g.*, Pate v. Robinson, 383 U.S. 375, 384 (1966). "[I]t is contradictory to argue that a defendant may be incompetent, and yet 'knowingly or intelligently' waive his right to have the court determine his capacity to stand trial." *Id. See also* People v. Thomas, 43 Ill. 2d 328, 332, 253 N.E.2d 431, 433 (1969) (closer examination was necessary to substantiate whether the defendant's choice not to cooperate with counsel was knowingly made); People v. Johnson, 15 Ill.App.3d 680, 304 N.E.2d 688 (1st Dist. 1973) (a defendant previously adjudged incompetent could not knowingly and understandingly waive the right to jury trial at a restoration hearing).

12. Note on *Competency* at 458. *Cf.* People v. Heral, 25 Ill.App.3d 806, 323 N.E.2d 138

At common law, a defendant was found incompetent for trial if he was unable to understand the purposes of the proceedings against him or assist in his own defense.[13] In *Dusky v. United States*,[14] the Supreme Court refined the common law test of competency to stand trial by holding that a defendant needed a "rational as well as factual understanding of the proceedings."[15] This formulation is seen as establishing the minimum necessary for a defendant to be found competent,[16] and it has been repeatedly cited with approval as the proper test of competency.[17]

The Illinois appellate court was thus faced with the issue of whether a defendant whose mental capability is maintained through the use of prescribed medication is competent to stand trial. The only witness to testify at the competency hearing in question[18] was a psychiatrist, and he had clearly stated that, in his opinion, the defendant was competent

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(2d Dist. 1975) (a defendant who is competent for trial must be able to actively assist in his defense; passive cooperation is not enough).

13. Janis, *Incompetency Commitment: The Need for Procedural Safeguards and a Proposed Statutory Scheme*, 23 CATH. U. L. REV. 720 (1974). Most states and the federal government codified the common law standard, and most contemporary courts enforce this standard.

14. 362 U.S. 402 (1960).

15. *Id.*

16. *See* Haddox, Gross & Pollack, *Mental Competency to Stand Trial While Under the Influence of Drugs*, 7 LOYOLA (L.A.) L. REV. 425, 428 (1974). *Cf.* Note on *Competency. But see* Oliver, *Judicial Hearings to Determine Mental Competency to Stand Trial, Sentencing Inst. of Ninth Circuit*, 39 F.R.D. 537, 543-44 (1966).

17. *See, e.g.*, Drope v. Missouri, 420 U.S. 162 (1975); People v. Lang, 26 Ill.App.3d 648, 325 N.E.2d 305 (1st Dist. 1975); Stoder v. State, 522 S.W.2d 77 (Mo. App. 1975); State v. Rand, 20 Ohio Misc. 98, 247 N.E.2d 342 (1969).

18. After the indictment in June of 1972, a competency hearing was held in which Dalfonso was adjudged incompetent to stand trial and was sent to the Illinois Security Hospital at Chester. In May, 1973, defendant filed a motion for another competency hearing, challenging his confinement as unconstitutional. This was the hearing that became the subject of this review by the appellate court. Dalfonso claimed that he was being held in violation of his fourteenth amendment rights as declared in Jackson v. Indiana, 406 U.S. 715 (1972). The *Jackson* Court found the "rule of reasonableness" used in the federal competency hearings applicable to state proceedings through the due process clause of the fourteenth amendment. The Court held that a person

> who is committed solely on account of his incapacity to proceed to trial cannot be held more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain that capacity in the foreseeable future.

Id. at 738. The *Jackson* Court also found a violation of petitioner's equal protection rights, since the standards for commitment and release of incompetents differed from the standards for those civilly committed. *Id.* at 730. *See also* Gobert, *Competency to Stand Trial: A Pre- and Post-* Jackson *Analysis*, 40 TENN. L. REV. 659 (1973).

to stand trial.[19] The court then dismissed the testimony regarding the defendant's future competency, stating that the crucial time in determining a defendant's competency is at the time of the hearing and not at some time in the future.[20]

Finding no Illinois cases on point, the court relied on *State v. Hampton*,[21] a decision of the Louisiana Supreme Court.[22] *Hampton* held that the use of medication to maintain competency is of no legal consequence. The court added that it "looks to the condition only. It does not look beyond existing competency and erase improvement produced by medical science."[23]

The court in *Dalfonso* thus adopted a functional approach to the use of prescribed medications. The testimony of the psychiatrist indicated

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19. 24 Ill.App.3d at 749-50, 321 N.E.2d at 381. For a definition of the Illinois competency test, *see* note 5, *supra*. Dalfanso's substantive constitutional claims, *see* note 18, *supra*, were not considered by the trial court in reaching its decision. *See* Record, at 102, People v. Dalfonso, 24 Ill.App.3d 748, 321 N.E.2d 379 (1st Dist. 1974). Although the psychiatrist testified that Dalfonso would probably retain his competency if the medication was discontinued, *see* Transcript, at 8, People v. Dalfonso, 24 Ill.App.3d 748, 321 N.E.2d 379 (1st Dist. 1974), the trial judge chose to ignore this testimony, fearing that without hospital supervision, the defendant would stop his medication and endanger the gains made during treatment. The court ruled that the defendant was unfit for trial; the defendant then appealed.

Since Dalfonso filed his May, 1973 petition, *see* note 18, *supra*, Illinois has made statutory changes, mandated in part by the *Jackson* decision. ILL. REV. STAT. ch. 38, § 1005-2-2(a) (Supp. 1974) requires that a defendant found unfit for trial be hospitalized and remanded for a commitment hearing under the procedures of the Mental Health Code, ILL. REV. STAT. ch. 91½, §§ 1-1 *et seq.* (1973). If the defendant is not hospitalized after a hearing the Department of Mental Health may petition the trial court, and the defendant may be released on bail or recognizance under such conditions as the trial court finds appropriate. ILL. REV. STAT. ch. 38, § 1005-2-2(a) (Supp. 1974). Additionally, criminal charges must be dismissed against a defendant who has been confined for a time equal to the maximum sentence he could have received for the offense as charged against him. ILL. REV. STAT. ch. 38, § 1005-2-2(c). At the present time, further revisions are being considered by the Governor's Commission on Revision of the Mental Health Code.

20. 24 Ill.App.3d at 750, 321 N.E.2d at 381. *Cf.* People v. Nyden, 14 Ill.App.3d 804, 303 N.E.2d 601 (1st Dist. 1973) (psychiatrist's prediction that defendant might be expected to have a full schizophrenic break in the future is not enough to raise a bona fide doubt as to defendant's competency). For a discussion of the difficulty of predicting future "dangerousness," *see* Comment, *Mental Health—Clarifying Statutory and Constitutional Guidelines for Involuntary Civil Commitment Procedure Under the Illinois Mental Health Code*—People v. Sansone, 6 LOYOLA (CHI.) L.J. 208, 214-15 (1975). *See also* United States v. David, 511 F.2d 355 (D.C. Cir. 1975); People v. Kadens, 399 Ill. 394, 78 N.E.2d 289 (1948); Schmidt v. State, 307 N.E.2d 484 (Ind. App. 1974); State v. Hampton, 253 La. 399, 218 So. 2d 311 (1969).

21. 253 La. 399, 218 So. 2d 311 (1969).

22. 24 Ill.App.3d at 751, 321 N.E.2d at 381.

23. *Id.*, *quoting*, 253 La. at 403, 218 So. 2d at 312.

that the medications had the effect of maintaining the defendant's competency.[24] The mental capabilities of the defendant became the sole focus of the court's analysis, and the use of the drug was important only to the extent that it affected these capabilities.[25] Under this functional analysis, the defendant was found competent for trial.[26]

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24. 24 Ill.App.3d at 750, 321 N.E.2d at 381. The court's reliance on an expert's testimony can prove to be misguided because confusion of the applicable standard by doctors and courts is common. For example, the Note on *Competency*, *supra* note 7, states:

> Initially, the issue of incompetency to stand trial must be distinguished from the question of civil committability, where the legal criteria are, generally, whether the person is dangerous to society or is in need of treatment and unable to care for himself, and from the defense of insanity in a criminal trial, where the question is whether the defendant's mental condition at the time of the criminal act was such that he should not be held responsible for this conduct.

Id. at 454. *Accord*, People v. Britton, 119 Ill.App.2d 110, 255 N.E.2d 211 (4th Dist. 1970) (noting the importance of this distinction); State v. Rand, 20 Ohio Misc. 98, 247 N.E.2d 342 (1969); Bennet, *Competency to Stand Trial: A Call for Reform*, 59 J. CRIM. L.C. & P.S. 569 (1968); Lewin, *Incompetency to Stand Trial: Legal and Ethical Aspects of an Abused Doctrine*, 1969 LAW & SOC. ORDER 233. *See also* Cooper, *Fitness to Proceed: A Brief Look at Some Aspects of the Medico-Legal Problem Under the New York Criminal Procedure Law*, 52 NEB. L. REV. 44 (1972), in which the author notes the tendency of psychiatrists to report as incompetent, defendants who are merely in need of psychiatric treatment. Cooper argues that competency is essentially a legal question and urges that courts make the final determination of the issue by using their own analysis.

Nevertheless, confusion as to what test is applicable is probably unwarranted in light of repeated holdings in Illinois and elsewhere that a defendant may be competent for trial although his mind may be unsound in other areas. *See, e.g.*, Withers v. People, 23 Ill. 2d 131, 177 N.E.2d 203 (1961) (confinement in prison psychiatric system is not ipso facto proof of incompetency); People v. Edwards, 28 Ill.App.3d 216, 328 N.E.2d 18 (2d Dist. 1975) (defendant who is in need of treatment and is educably mentally handicapped is not entitled to a competency hearing *sua sponte*); People v. Gibson, 21 Ill.App.3d 692, 315 N.E.2d 557 (1st Dist. 1974) (three months after a jury finding of competency, a diagnosed progressive mental disorder does not raise a bona fide doubt as to competency); State v. Spivey, 65 N.J. 21, 319 A.2d 461 (1974) (insane defendant may be capable of standing trial).

25. Although the *Dalfonso* court did not use the following breakdown, in evaluating the mental capabilities of a defendant, many competency tests involve four criteria: (1) contact with reality—orientation to the time, place, and physical objects of one's surroundings necessary for a factual understanding of the proceedings; (2) minimum intelligence —the intelligence necessary for a comprehension of the meaning of the proceedings; (3) rationality—judgment and ability to reason, expressed as the ability to rationally develop simple conclusions from readily identifiable facts; and (4) memory—the recollection necessary for the defendant to be able to inform his counsel of the existence of facts and witnesses pertinent to his defense. Bennet, *supra* note 24, at 574. *See also* Haddox, Gross & Pollack, *supra* note 16, at 436; Note, *The Propriety of Using Tranquilizing Drugs to Calm a Person to a Point Where He is Competent to Stand Trial*, 31 OHIO ST. L.J. 617, 620-21 (1970).

26. The appellate court in *Dalfonso* rejected the approach taken by the trial courts in

The Illinois court also found other case law consistent with the view expressed in *Hampton*.[27] The Ohio decision of *State v. Rand*[28] held that a defendant is competent when under properly administered medications. The fact that the state had discontinued his medication prior to the competency hearing was unimportant because the evidence presented demonstrated that if the defendant were still on medication, he would be competent to stand trial.[29] Competency has also been found in instances where the defendant attacked his conviction on the ground that the use of medication administered by authorities to maintain his sanity rendered him incompetent.[30]

In addition to the cases cited by the Illinois court, other cases of interest include cases in which the defendant deliberately ingested psychoactive drugs[31] or was a narcotics addict.[32] The effects of the drug on

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Hampton and *Dalfonso*. These trial courts held that "synthetic sanity" was not sufficient to render a defendant competent in *Hampton* or not sufficiently permanent to find competence in *Dalfonso*. These courts seem to view the use of drugs per se as debilitating. *See* Haddox, Gross & Pollack, *supra* note 16, at 437. Other courts have rejected this approach when a defendant has sought to assert his "synthetic sanity" as grounds for reversal of his conviction. *See* note 30 and accompanying text *infra*.

27. 24 Ill.App.3d at 750-51, 321 N.E.2d at 381.

28. 20 Ohio Misc. 98, 247 N.E.2d 342 (1969).

29. The defendant was removed from his medications to "present him in his real face before the Court." *Id.* at 105, 247 N.E.2d at 347. The court found the defendant competent to stand trial under the *Dusky* test and dismissed as irrelevant the state's contention that the defendant would present a possible danger to society if released. For a description of the *Dusky* test, *see* notes 14-17 and accompanying text *supra*. For a discussion of abuses of the competency procedure, including its use by the state in holding defendants without trial, *see* Lewin, *supra* note 24; Bennet, *supra* note 24; Note on *Competency*.

30. In State v. Plaisance, 252 La. 212, 210 So. 2d 323 (1968), defendant was initially adjudged incompetent and committed to the state mental hospital. Subsequently, the defendant regained his competency and was brought to trial. At both hearings, the court considered psychiatric findings submitted by the "lunacy" commission (now called the "sanity" commission, LA. CODE CRIM. PRO. ANN. art. 644 (West 1967)). The commission performs the same function as an appointed psychiatrist in other states. The defendant was maintained on medications during trial on the recommendation of the hospital authorities. In finding defendant to have been competent at trial, the appeals court rejected the defendant's claim that because his sanity was "synthetic," he was incompetent. The claim that the defendant would present a menace to society if released was ruled as irrelevant to the issue of competency on the authority of State v. Swails, 223 La. 751, 66 So. 2d 796 (1953). *See* State v. Potter, 285 N.C. 238, 204 S.E.2d 649 (1974); State v. Hancock, 247 Ore. 21, 426 P.2d 872 (1967). In each case, the court rejected a "synthetic sanity" challenge of the conviction of a defendant who was maintained on medication during the trial.

31. State v. Arndt, 1 Ore. App. 608, 465 P.2d 486 (1970). The defendant, who had deliberately ingested 400-600 mg. of Thorazine (an antipsychotic drug), was found to be competent. Due to defendant's long history of drug abuse, however, this normally large dose had little effect on him.

the defendant, not the drug per se, were assessed in determining that the defendant was competent to stand trial.[33]

The court in *Dalfonso* set sound precedent in Illinois by implementing the underlying purposes of the competency rule.[34] The holding allows an individual defendant's capacity to stand trial to be fully assessed, and, at the same time, preserve accuracy, fairness, and decorum. The flexibility inherent in this approach allows its use in the full gamut of situations in which a defendant under the influence of drugs is brought to trial.

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32. Courts have uniformly held that the use of narcotics does not, by itself, render a person incompetent. Haddox, Gross & Pollack, *supra* note 16, at 438. *See, e.g.*, United States v. Tom, 340 F.2d 127 (2d Cir. 1965) (in light of evidence as to the defendant's trial demeanor and outside activities, the use of narcotics at trial did not raise a bona fide doubt of defendant's competency); Heard v. United States, 263 F. Supp. 613 (D.D.C. 1967) (bare allegation of long term narcotics addiction and other "aberrant behavior" insufficient to require hearing *sua sponte* on competency). *Cf.* Hansford v. United States, 365 F.2d 920 (D.C. Cir. 1966) (because of the varying effects of narcotics on different individuals, a hearing is required to determine competency where the defendant may be undergoing withdrawal). *See also* Lobaugh v. State, 226 Ind. 548, 82 N.E.2d 247 (1948); Sewell v. Lainson, 244 Iowa 555, 57 N.W.2d 556 (1953). *See generally* note 25 and accompanying text *supra*.

33. *Cf.* State v. Murphy, 56 Wash. 2d 761, 355 P.2d 323 (1960) (defendant's due process right to be present at trial was denied where defendant's demeanor before the jury was adversely affected by medications).

34. *See also* Virgin Islands v. Crowe, 391 F. Supp. 987, 989 (D. St. Croix, Virgin Is. 1975), where the court cited *Hampton* and *Dalfonso* in finding the defendant competent to stand trial. *Cf.* Askew v. United States, 383 F. Supp. 499 (D.C. Cal. 1974); Carter v. State, 198 Miss. 523, 21 So. 2d 404 (1945).